

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 1113

Short Title: Paid Sick/Disability/Family Leave & Trust. (Public)

Sponsors: Representatives Harrison, Fisher, Gill, and L. Hall (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Commerce and Job Development, if favorable, Regulatory Reform

May 11, 2016

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING PAID LEAVE EMPLOYMENT BENEFITS FOR EMPLOYEES AND
3 ESTABLISHING A TRUST FUND TO SECURE THOSE BENEFITS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 95 of the General Statutes is amended by adding a new Article
6 to read:

7 "Article 21A.

8 "Paid Leave Benefits and Trust Fund.

9 **"§ 95-246. Definitions.**

10 Definitions. – The following definitions apply in this Article:

- 11 (1) Employment benefits. – All benefits provided or made available to employees
12 by an employer, including group life insurance, health insurance, disability
13 insurance, sick leave, annual or vacation leave, educational benefits, and
14 pensions.
- 15 (2) Family care benefits. – The disability benefits provided pursuant to this Article
16 to a covered employee who is on leave from or who has left employment with
17 the employer because the employee is caring for a family member for one of the
18 following reasons: (i) the birth of a child of the employee, (ii) the placement of
19 a child with the employee for adoption or foster care, or (iii) a serious health
20 condition of a family member of the employee.
- 21 (3) Family care leave. – The leave taken by a covered employee from employment
22 to provide care for a family member for one of the following reasons: (i) the
23 birth of a child of the employee, (ii) the placement of a child with the employee
24 for adoption or foster care, or (iii) a serious health condition of a family
25 member of the employee.
- 26 (4) Family member. – The spouse, child, parent, parent of spouse, grandparent, or
27 grandchild of an individual seeking leave or disability benefits under this
28 Article.
- 29 (5) Serious health condition. – An illness, injury, impairment, or physical or mental
30 condition that involves either (i) inpatient care in a hospital, hospice, or
31 residential medical facility or (ii) continuing treatment by a health care
32 provider.
- 33 (6) Temporary disability benefits. – Disability benefits provided to a covered
34 employee who is on a leave from or who has left employment with the



1 employer because of a serious health condition of the employee that makes the
2 employee unable to perform the functions of the employee's position.

3 (7) Temporary disability leave. – Leave taken by a covered employee from
4 employment because of a serious health condition of the employee that makes
5 the employee unable to perform the functions of the employee's position.

6 **"§ 95-246.1. Paid leave required; temporary disability; family care.**

7 (a) Eligibility. – An employee is eligible for temporary disability leave or family care
8 leave if the employee has at least 1,250 hours of service for the employer. The duration of
9 temporary disability or family care leave shall be limited as provided by this section.

10 (b) Birth of Child. – In the case of family care leave taken because of (i) the birth of a child
11 of the employee or (ii) the placement of a child with the employee for adoption or foster care, the
12 entitlement to leave shall expire at the end of the 12-month period beginning on the date of the
13 birth or placement.

14 (c) Certification. – An employer may, at its option, require that a request for temporary
15 disability or family care leave be supported by a certification of the need for leave.

16 (d) Restoration. – An employee who has taken temporary disability or family care leave
17 pursuant to this section shall be restored to the employee's previous position, or to a substantially
18 similar position, with the same status, pay, employment benefits, length of service credit, and
19 seniority as of the date of leave, provided that the right to such restoration shall be limited to 12
20 weeks during any 12-month period. An employer shall not be required to restore an employee who
21 has taken temporary disability or family care leave to the previous or to a substantially similar
22 position if other employees of equal length of service credit and status in the same or substantially
23 similar positions have been laid off due to economic conditions or other changes in operating
24 conditions affecting employment during the period of leave; provided, however, that the employee
25 who has taken leave shall retain any preferential consideration for another position to which the
26 employee was entitled as of the date of leave.

27 (e) Accrued Leave. – Taking of temporary disability or family care leave shall not affect
28 an employee's right to receive accrued vacation time, sick leave, bonuses, advancement, seniority,
29 length of service credit, employment benefits, plans or programs for which the employee was
30 eligible at the date of the employee's leave, and any other rights incident to the employee's
31 employment.

32 (f) Coverages Continued. – During the duration of an employee's temporary disability or
33 family care leave, the employer shall continue to provide for and contribute to the employee's
34 employment-related health insurance benefits, if any, under the same terms and conditions as
35 those existing prior to leave, up to 12 weeks during any 12-month period.

36 (g) Other Laws. – Nothing in this section shall be construed so as to affect any bargaining
37 agreement, company policy, or other federal or State law which provides for greater or additional
38 rights to leave than those provided for by this section.

39 (h) Notification. – If an employee intends to take family care leave because of the birth of
40 a child of the employee, or the placement of a child with the employee for adoption or foster care,
41 and where the need for leave is foreseeable, the employee shall notify the employer of the
42 intended leave at least 30 days prior to the date that the leave is to begin, except that if the date of
43 the birth or placement requires leave to begin in less than 30 days, the employee shall provide such
44 notice as is practicable. If an employee intends to take temporary disability or family care leave
45 because of a serious health condition of the employee or of a family member of the employee, and
46 where the need for leave is foreseeable based on planned medical treatment, the employee shall
47 notify the employer of the intended leave at least 30 days prior to the date that the leave is to
48 begin, except that if the date of the treatment requires leave to begin in less than 30 days, the
49 employee shall provide such notice as is practicable. The notice required under this subsection
50 shall consist of the anticipated starting date of the leave, the length of the leave, and the expected

1 date of return. If an employer fails to provide notice of the provisions of this section, the
2 employee's notice requirement shall be waived.

3 (i) Unlawful Activity. – It is unlawful for any employer to retaliate by discharging, firing,
4 suspending, expelling, disciplining, or in any other manner discriminating against an employee:

5 (1) For exercising any right to which such employee is entitled under this section or
6 with the purpose of interfering with the exercise of any right to which such
7 employee is entitled under this section or

8 (2) Who has filed a complaint or instituted or caused to be instituted a proceeding
9 under or related to this section, has testified or is about to testify in an inquiry
10 or proceeding, or has given or is about to give information connected to any
11 inquiry or proceeding relating to this section.

12 (j) Seniority. – Any negative change in the seniority, status, employment benefits, pay, or
13 other terms or conditions of employment of an employee who has been restored to a position
14 pursuant to this section that occurs within six months of such restoration, or of an employee who
15 has participated in proceedings or inquiries pursuant to this section within six months of the
16 termination of proceedings, shall be presumed to be retaliation under this section.

17 (k) Enforcement. – The Commissioner of Labor shall interpret and enforce of this Article
18 and may adopt rules and regulations for that purpose.

19 **"§ 95-246.2. Benefit computations; other requirements.**

20 (a) Computation of Benefits. – The weekly benefit amount under this Article shall be
21 determined as follows:

22 (1) For an eligible individual whose yearly earnings are not more than thirty
23 percent (30%) of the area median income, the weekly benefit amount shall be
24 equal to ninety-five percent (95%) of the eligible individual's weekly wage;

25 (2) For an eligible individual whose yearly earnings are more than thirty percent
26 (30%) of but not more than fifty percent (50%) of the area median income, the
27 weekly benefit amount shall be equal to ninety percent (90%) of the eligible
28 individual's weekly wage;

29 (3) For an eligible individual whose yearly earnings are more than fifty percent
30 (50%) of but not more than eighty percent (80%) of the area median income,
31 the weekly benefit amount shall be equal to eighty-five percent (85%) of the
32 eligible individual's weekly wage; and

33 (4) For an eligible individual whose yearly earnings are more than eighty percent
34 (80%) of the area median income, the weekly benefit amount shall be equal to
35 sixty-six percent (66%) of the eligible individual's weekly wage.

36 (b) Cap on Benefits. – The weekly benefit determined under subsection (a)(1) of this
37 section shall not exceed one thousand dollars (\$1,000) per week. Commencing January 1, 2018,
38 the Commissioner of Labor shall adjust annually the maximum weekly benefit amount to reflect
39 changes in the United States Bureau of Labor Statistics Consumer Price Index for all urban
40 consumers, all goods, or its successor index.

41 (c) Prorated Benefits. – For an employee who takes leave on a part-time basis, the weekly
42 benefit amount shall be prorated.

43 (1) Temporary disability benefits. – The duration of temporary disability benefits
44 shall not exceed 26 weeks during the benefit year unless the employee takes
45 leave on a part-time basis, in which case the duration of temporary disability
46 benefits shall not exceed 52 calendar weeks and the total benefit amount shall
47 not exceed 26 times the weekly benefit amount.

48 (2) Family care benefits. – The duration of family care benefits shall not exceed 12
49 weeks during the benefit year unless the employee takes leave on a part-time
50 basis, in which case the duration of family care benefits shall not exceed 24

1 calendar weeks and the total benefit amount shall not exceed 12 times the
2 weekly benefit amount.

3 (d) Waiting Period. – No temporary disability or family care benefits shall be paid during
4 the first seven consecutive days of any claim for such benefits. An employee may but shall not be
5 required to utilize accrued sick or vacation pay during the first seven consecutive days of his claim
6 for temporary disability benefits.

7 (e) Certification. – An employee who makes a claim for:

8 (1) Temporary disability benefits shall provide a certification issued by the health
9 care provider of the employee. The certification shall be sufficient if it states the
10 date on which the serious health condition commenced, the probable duration
11 of the condition, the appropriate medical facts within the knowledge of the
12 health care provider, and a statement that the employee is unable to perform the
13 functions of his position.

14 (2) Family care benefits because of the serious health condition of a family
15 member of the employee shall provide a certification issued by the health care
16 provider of the family member. The certification shall be sufficient if it states
17 the date on which the serious health condition commenced, the probable
18 duration of the condition, the appropriate medical facts within the knowledge of
19 the health care provider, a statement that the employee is needed to care for the
20 family member, and an estimate of the amount of time that the employee is
21 needed to care for the family member.

22 (3) Family care benefits because of the birth of a child of the employee shall
23 provide either a birth certificate or a certification issued by the health care
24 provider of the child of the eligible employee. The certification shall be
25 sufficient if it states the date of the child's birth.

26 (4) Family care benefits because of the placement of a child with the employee for
27 adoption or foster care shall provide a certification issued by the health care
28 provider of the child, an adoption or foster care agency involved in the
29 placement, or by other persons as determined by the division. The certification
30 shall be sufficient if it states the date of placement.

31 (5) Family care benefits because of the placement with the employee for adoption
32 or foster care of a child 18 years of age or older and incapable of self-care
33 because of a mental or physical disability shall, in addition to the certification
34 required by subdivision (4) of this subsection, also provide a certification issued
35 by the health care provider of the child or by other persons as determined by the
36 division. The certification shall be sufficient if it states the nature of the
37 disability and fact that the child is incapable of self-care.

38 (f) Misrepresentation. – An individual shall not be eligible to receive disability benefits if
39 the Commissioner of Labor finds that the individual, for the purpose of obtaining disability
40 benefits, has willfully made a false statement or representation, with actual knowledge of the
41 falsity thereof, or has willfully withheld a material fact concerning the facts required to be certified
42 pursuant to this subsection.

43 (g) Confidentiality. – Any medical or health information required under this section shall
44 be treated as confidential and not disclosed except with permission from the employee who
45 provided it unless disclosure is otherwise required by law.

46 (h) Ineligibility. – No individual may receive benefits under this section for a week in
47 which the individual receives an amount equal to or greater than the weekly benefit amount in the
48 form of wages or a wage replacement under any of the following:

49 (1) Any government program or law, including, but not limited to unemployment
50 insurance, workers' compensation other than for permanent partial disability

1 incurred prior to the temporary disability claim, or under other State or federal
2 temporary or permanent disability benefits law.

3 (2) A permanent disability policy or program of an employer.

4 (3) A temporary disability policy or program of an employer.

5 (4) A paid sick, vacation, family, or medical leave policy of an employer. For a
6 week in which an individual receives wages or a wage replacement less than the
7 weekly benefit amount, the individual shall receive disability benefits equal to
8 the difference between the weekly benefit amount and the amount of wages or
9 wage replacement received.

10 Any wage replacement received under the programs or policies listed in this subsection and
11 resulting from the same birth, adoption, or serious health condition on which the individual's claim
12 for disability benefits is based shall be deducted from the total amount of disability benefits for
13 which the individual would otherwise be eligible.

14 (i) No Exhaustion Requirement. – Nothing in this subsection shall be construed to allow
15 an employer to compel an employee to exhaust rights to any paid sick, vacation, or personal time
16 prior to receiving benefits under this Article.

17 (j) Public Education. – There Commissioner of Labor shall establish a division of family
18 and medical leave which shall conduct a public education campaign to inform workers and
19 employers about the availability of temporary disability and family care leave and benefits, the
20 requirements for receiving such leave and benefits, and how to apply for such leave and benefits.

21 **"§ 95-246.3. Benefits administration; security.**

22 (a) An employer or an association of employers shall secure temporary disability and
23 family care benefits for employees in any of the following ways:

24 (1) By depositing and maintaining with the Treasurer of the State, the contributions
25 which the employer is required to pay according to the terms of this Article and
26 in the form and manner determined by the division.

27 (2) By insuring and keeping insured the payment of temporary disability and
28 family care benefits with any stock, mutual, reciprocal, or other insurer
29 authorized to transact the business of disability insurance in the State, provided
30 that the policy is acceptable to the division as satisfying the obligation to
31 provide for the payment of disability benefits under this Article, that the
32 benefits under the policy are at least as favorable as the disability benefits
33 required by this Article and that the policy does not require contributions from
34 any employee or class of employees.

35 (3) By a private plan or agreement which the employer may, by her or his sole act,
36 terminate at any time, provided that the plan or agreement is acceptable to the
37 division as satisfying the obligation to provide for the payment of disability
38 benefits under this Article, that the benefits under the plan or agreement are at
39 least as favorable as the disability benefits required by this Article, and that the
40 policy does not require contributions from any employee or class of employees.

41 (4) By any plan or agreement in existence by agreement or collective bargaining
42 contract between the employer or employers or an association of employers and
43 an association of employees, provided that the plan or agreement is acceptable
44 to the division as satisfying the obligation to provide for the payment of
45 disability benefits under this Article, that the benefits under the plan or
46 agreement are at least as favorable as the disability benefits required by this
47 Article, and that the plan or agreement does not require contributions from any
48 employee or of any class of employees.

49 (5) Nothing in this Article shall be construed as to affect any bargaining agreement,
50 company policy, or other State or federal law which provides for greater or
51 additional benefits than those required under this Article.

1 (6) Nothing in this Article shall be construed as prohibiting employees from
2 contributing to the additional cost attributable to providing benefits that are
3 greater than those required under this Article.

4 (b) If payment of disability benefits is provided in whole or in part pursuant to
5 subdivisions (2), (3), or (4) of subsection (a) of this section, the employer or insurer shall file with
6 the division a notice of coverage and statement of benefits provided.

7 (c) Employers providing for the payment of disability benefits under subdivisions (2), (3),
8 or (4) of subsection (a) of this section shall not be required to make contributions pursuant to
9 subdivision (1) of subsection (a) of this section.

10 **"§ 95-246.4. Trust fund established.**

11 (a) There is established in the Treasury of the State, separate and apart from all public
12 monies or funds of the State, a family and employment security trust fund which shall be
13 administered by the State Treasurer exclusively for the purposes of this Article. All payments
14 pursuant to this Article shall be paid into the trust fund, and all disability benefits payable under
15 this Article shall be paid from the trust fund. The trust fund shall consist of the following:

16 (1) All contributions collected pursuant to this section, together with any interest
17 thereon.

18 (2) Interest earned on any monies in the trust fund.

19 (3) Any property or securities acquired through the use of monies belonging to the
20 trust fund.

21 (4) All earnings of such property and securities.

22 (5) All monies transferred into the trust fund from the family and employment
23 security administrative account.

24 (6) All other monies received for the trust fund from any source.

25 (b) There is established in the Treasury of the State, separate and apart from all public
26 monies or funds of the State, a family and employment security administrative account which shall
27 be administered by the State Treasurer exclusively for the purposes of this Article. The
28 administrative account shall consist of the following:

29 (1) All contributions collected pursuant to this section, together with any interest
30 thereon.

31 (2) All fines and penalties for the administrative account pursuant to this Article.

32 (3) All monies collected by way of subrogation.

33 (4) Interest earned on any monies belonging to the administrative account.

34 (5) Any property or securities acquired through the use of monies belonging to the
35 administrative account.

36 (6) All earnings of such property and securities.

37 (7) All monies appropriated to the administrative account by the legislature.

38 (8) All other monies received for the administrative account from any source.

39 (c) The State Treasurer shall be the treasurer and custodian of the family and employment
40 security trust fund and the family and employment security administrative account and shall
41 administer the trust fund and administrative account. All monies in the trust fund and
42 administrative account shall be held in trust for the purposes of this Part only and shall not be
43 expended, released, appropriated, or otherwise disposed of for any other purpose. Monies in the
44 trust fund and administrative account may be deposited in any depository bank in which general
45 funds of the State may be deposited, but such monies shall not be commingled with other State
46 funds and shall be maintained in separate accounts on the books of the depository bank. Such
47 monies shall be secured by the depository bank to the same extent and in the same manner as
48 required by the general depository law of the State, and collateral pledged for this purpose shall be
49 kept separate and distinct from any other collateral pledged to secure other funds of the State. The
50 trust fund shall maintain an annualized amount of at least one hundred forty percent (140%) of the
51 previous year's expenditure.

1 (d) The State Treasurer shall pay all expenses incurred in administering the provisions of
2 this Article. In the event that the balance in the family and employment security trust fund shall at
3 any time be insufficient to pay disability benefits under this Article, the Governor, upon the State
4 Treasurer's request, shall cause such sums as may be required for the payment of such disability
5 benefits to be transferred from the family and employment security administrative account to the
6 family and employment security trust fund.

7 (e) Expenditures of monies in the family and employment security trust fund shall not be
8 subject to provisions of the State Budget Act. Benefits shall be paid from the trust fund upon
9 warrants drawn upon the State Treasury by vouchers approved by the Commissioner of Labor.

10 (f) The State Treasurer may, from time to time, invest such monies in the family and
11 employment security trust fund as are in excess of the amount deemed necessary for the payment
12 of disability benefits for a reasonable future period. Such monies may be invested in bonds of any
13 political or municipal corporation or subdivision of the State, or any of the outstanding bonds of
14 the State, or invested in bonds or interest-bearing notes or obligations of the State, or of the United
15 States, or those for which the faith and credit of the United States are pledged for the payment of
16 principal and interest (or in federal land bank bonds or joint stock farm bonds). The investments
17 shall at all times be so made that all the assets of the trust fund shall always be readily convertible
18 into cash when needed for the payment of disability benefits. The treasurer shall have the power to
19 dispose of securities or other properties belonging to the trust fund when needed for the payment
20 of disability benefits.

21 (g) Temporary disability and family care benefits shall be paid from the family and
22 employment security trust fund to eligible individuals. Disability benefits shall also be paid from
23 the trust fund to an employee who is entitled to receive such disability benefits but cannot because
24 of the bankruptcy of his employer or because the employer is not in compliance with this Article.
25 Disability benefits paid from the trust fund to such employee may be recovered through
26 bankruptcy proceedings or from the noncomplying employer. The treasurer shall institute
27 administrative and legal action to effect recovery of such disability benefits.

28 (h) For the purpose of accumulating funds for the payment of temporary disability and
29 family care benefits, and administrative costs, each employer shall in the first year after the date
30 the employer becomes subject to this Article, and each year thereafter, pay amounts as determined
31 by the Treasurer. Each employer shall transmit all such payments to the trust fund or
32 administrative account in such manner, at such time, and under such conditions as shall be
33 prescribed by regulations.

34 (i) On or before October first of each year, the Treasurer shall certify to the Secretary of
35 the Executive Office of Labor and Workforce Development the estimated costs for the coming
36 year of disability benefits and for administrative services provided by the division. Said rates of
37 employer contribution to both the trust fund and the administrative account as established by this
38 Article shall be adjusted annually as consistent with the needs of the operation of said trust fund
39 and administrative account.

40 (j) An employer to whom the division has sent a request for wage and employment
41 information for an employee claiming temporary disability or family care benefits under this
42 Article shall complete and file such information within 10 days from the date the request was sent.
43 If an employer does not respond within 10 days, that employer may be held liable for any and all
44 related costs incurred by the State.

45 **"§ 95-246.5. Information and posting requirements.**

46 (a) Every employer subject to this Article shall keep posted in a conspicuous place or
47 places on its premises a workplace notice prepared or approved by the division which shall set
48 forth excerpts from this Article and other information the division deems necessary to explain the
49 Article. The workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian,
50 Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary
51 language of at least 10,000 or one-half of one percent (0.5%) of all residents of the State. Each

1 employer with five or more employees whose primary language is not English shall post the
2 workplace notice in that language, if such notice is available from the division.

3 (b) Each employer shall issue to each employee, within 30 days from date of the
4 employee's first day of work, written information provided or approved by the division which
5 explains the availability of temporary disability and family care leave, and temporary disability
6 and family care benefits provided pursuant to this Article.

7 (c) Each employer shall issue to each employee taking temporary disability or family care
8 leave, as soon as practicable, but not more than 30 days from the date that the employee gives
9 notice of leave, written information provided or approved by the division, which shall contain the
10 name and mailing address of the employer; the identification number assigned to the employer by
11 the division; information describing the availability of temporary disability and family care
12 benefits provided pursuant to this Article; instructions on how to file a claim for disability
13 benefits; the address and telephone number of the regional office of the division which serves the
14 recipient; and the telephone number of the division. Delivery is made when an employer provides
15 such information to an employee in person or by mail to the employee's last known address.

16 (d) Any employer who fails to comply with the provisions of subsection (a) or (b) of this
17 section shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than three
18 hundred dollars (\$300.00). A subsequent violation of this subsection by the same employer shall
19 be punished by a fine of not less than two hundred fifty dollars (\$250.00) nor more than one
20 thousand dollars (\$1,000). Where an employer fails to comply with this provision, an employee
21 shall be deemed to have provided notice of leave under this Article. The employer shall have the
22 burden of demonstrating compliance with subsections (a) and (b) of this section.

23 (e) The waiting period for an employee who did not receive the information required by
24 this Article and who failed to file timely for disability benefits shall be the initial week that such
25 employee would have been eligible to receive temporary disability benefits or family care benefits.

26 **"§ 95-246.6. Construction of this Article.**

27 This Article shall be liberally construed as remedial legislation to further its purpose of
28 providing job-protected temporary disability and family care leave, as well as temporary disability
29 and family care benefits, to the employees of the State. All presumptions shall be made in favor of
30 the availability of leave and the payment of disability benefits under this Article."

31 **SECTION 2.** This act becomes effective July 1, 2017.